BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	

COMMENTS OF SBC COMMUNICATIONS INC.

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SUMMARY*

Congress has plainly established a national telecommunications policy goal of full and fair competition as soon as possible. SBC and the Commission both share that goal in common. SBC does not agree, however, with some of the Commission's proposed means to that end. Congress has made it clear that the time has come for the telecommunications industry to shift from "comprehensive regulation" to "facilitative regulation." For all of its landmark attributes, the Telecommunications Act of 1996 has no stronger message than that. What this means for federal and state regulators is simply this: impose only those regulations that are necessary to facilitate the culmination of the natural market forces that Congress has set into motion via a set of powerful business incentives designed to motivate -- not mandate -- increased competition.

Specifically, by conditioning BOC entry into in-region long-distance upon compliance with Sections 251, 252, and the Section 271 Competitive Checklist, Congress created a powerful economic incentive for BOCs to quickly negotiate interconnection terms with potential competitors. SBC is committed to completing this process swiftly through voluntary negotiations because it cannot afford to continue to be excluded from long-distance business originating in its own territory while others enter the local exchange market. If regulations intrude unnecessarily on this voluntary process of negotiation, contrary to Congressional intent, the likely result will be delay, uncertainty and diminished competition.

The hundreds of issues raised in the Commission's NPRM will be answered. But Congress desires that the great majority of such questions be answered by industry participants as they step through the process of negotiation, state mediation and arbitration, and state approval of competitive

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* Abbreviations used herein are referenced within the text.

interconnection agreements. This process was carefully designed by Congress and should not be derailed by parties seeking to change the rules after the game has already begun.

SBC will only point out the relatively few areas where Congress intended the Commission to regulate parts of this process. For all other areas Congress intended that the Commission facilitate rather than regulate. It is crucial for the Commission to acknowledge that the new role of "facilitative regulation" is markedly different from its traditional role if the system of natural market incentives that Congress has created is to succeed in fostering a more competitive era. Comprehensive regulation would undermine the ability of willing parties to negotiate voluntary interconnection agreements because others would merely stand behind their interpretations of Commission rulings and make demands rather than negotiating in good faith.

It is also important that the Commission duly recognize the significant implementation role that Congress intended for state commissions. Rather than seeking out areas in which the Commission might fashion national standards governing implementation of the Act, it should follow Congress's cue to engage in the federal deregulatory process clearly envisioned by the Act. If the implementation functions assigned by Congress to the states are not acknowledged, the ensuing jurisdictional confrontations will be certain to waylay the pro-competitive scheme that Congress so meticulously crafted.

Determining the technical feasibility of interconnection and unbundling requests made of incumbent LECs must be accomplished with the proper perspective. Mere technical "possibilities" cannot be confused with true feasibility or the resulting arbitrage, inefficiencies and industry disruption will cripple competitive progress. Crucial economic and administrative ramifications must also be fully taken into account in such determinations.

The proper notion of unbundling as contemplated by the Act is critical. SBC fully agrees

with the Commission that it was not Congress's intent that IXCs be permitted to circumvent and undermine the entire current access charge regime by obtaining the components of exchange access under the guise of unbundled "network elements." Allowing such destructive arbitrage would be certain to render the demise of the entire system of implicit and explicit support flowing to serve myriad long-standing public policies.

The Commission should acknowledge the costing and pricing guidelines expressly established by the Act for interconnection, unbundled network elements, transport and termination, and resold services. Congress desires such matters to be resolved via independent negotiations, not through traditional regulation. Where negotiations are unsuccessful, Congress has supplied adequate parameters for both costing and pricing in each of these areas.

Specifically, ILECs should be permitted to recover all relevant costs of supplying new entrants with interconnection and unbundled network elements. The Act seeks to foster an environment that is pro-competitive, not pro-competitor Congress did not intend for market entry to be subsidized by ILEC revenues needed to recover their costs of serving as the nation's carriers-of-last-resort. The ILECs' joint, common, embedded and other costs should be recovered through any rates that have to be established by regulators under the Act.

The Act also makes clear that the price for intrastate telecommunications services required to be resold by ILECs is to be determined by state regulators. As importantly, the Commission must help the industry keep separate the concepts of unbundling and resale. Under the Act, network elements are to be unbundled -- not resold, whereas retail end user telecommunications services are to be resold -- not unbundled

SBC supports the Commission's pro-competitive goal, but respectfully urges the Commission to acknowledge the need for a facilitative regulatory approach.

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SBC Communications Inc. (SBC) respectfully files these Comments, on behalf of all its subsidiaries, concerning the Commission's April 19, 1996 Notice of Proposed Rulemaking (FCC 96-182) (NPRM) on implementing certain provisions of the Telecommunications Act of 1996.[1] SBC will have subsidiaries both in the position of an incumbent local exchange carrier (ILEC) and that of a "requesting telecommunications provider" (local service provider or LSP) under the 1996 Act. Therefore, SBC seeks a Commission approach in this proceeding that is appropriately balanced as between ILECs and LSPs. Such a balanced approach is essential to attain the Congressional goal of widespread competition on the merits in United States telecommunications markets.[2]

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[1] Pub. L. No. 104-104, 110 Stat. 56 (1996 Act or Act).

[2] One of SBC's subsidiaries is Southwestern Bell Telephone Company (SWBT), a Bell operating company (BOC) which falls into the category of an ILEC under the Act.

I. INTRODUCTION

Although SBC respectfully disagrees with some of the Commission's tentative conclusions regarding the best way to achieve its pro-competitive goals, SBC fully shares those goals. The first sentence of the Telecommunications Act of 1996 Conference Report[3] and the first sentence of the NPRM[4] agree that Congress intended to:

> provide for a pro-competitive, de-regulatory national policy framework designed to accelerate readily private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.

SBC seeks to work with the Commission and the industry to help bring about greater competition in our own industry. But actions speak louder than words -- on May 9, 1996, to SBC's knowledge SWBT became the first ILEC to sign an interconnection agreement under the new Act that will allow an LSP to compete directly with SWBT for local exchange services in Texas. SWBT is negotiating similar agreements with over twenty other companies.

Through the Act, Congress has chosen an incentive-laden approach to obtain the willing efforts of BOCs in the implementation of full competition in local and interexchange markets. Obviously, that approach is already working. BOCs recognize

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[3] Conference Report 104-458 on S.652, 104th Congress, 2d Session, February 1, 1996, at 1 (Conference Report).

[4] NPRM, para. 1.

that their financial futures depend in large part upon their ability to offer all of the telecommunications services customers want, and that the Act prohibits their full entry into the interexchange and manufacturing businesses until they have met the statutory terms of the "Competitive Checklist."[5]

Congress's approach for enhancing telecommunications competition establishes statutory principles that provide bright-line guidance to BOCs and other ILECs as they negotiate the terms and conditions of agreements for interconnection, resale, unbundling, and all of the other elements necessary to facilitate the introduction of competition to the local exchange in a manner which satisfies the Competitive Checklist. Congress intended through its chosen approach to encourage facilities-based competition in local and interexchange markets; to permit additional competition to develop efficiently under natural market forces; and to preserve and advance universal service principles and objectives so that the benefits of competition would be available to all Americans.

SBC strongly agrees with the Commission's proposed resolution of certain important issues, including

(1) The Commission's confirmation that interexchange carriers (IXCs) should not be permitted to obtain interconnection under Section 251(c)(2) in lieu of purchasing Part 69 access services.[6] The Commission has correctly determined that a backdoor evasion of access charges is inconsistent with

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[5] 47 U.S.C. Section 271 (c)(2)(B).

[6] 47 U.S.C. Section 251 c)(2); NPRM, para. 164.

the Act, with the Commission's stated goals, and with Congressional intent to promote local competition.

(2) The Commission's analysis that only the establishment of a minimum set of proposed, unbundled network elements is proper under Section 251(d)(3), with additional elements for unbundling being left to the negotiating, interconnecting parties or to future review.[7]

(3) The Commission's acknowledgment that under the Act universal service should not be adversely impacted by the implementation of local interconnection and competition policies.[8]

Congress has designed comprehensive statutory procedures and has specified explicit negotiation, mediation, arbitration, and approval processes intended to permit those procedures to be implemented. The Commission need not and should not promulgate detailed regulations on top of statutory detail. In light of Congress's express intent, the NPRM's highly detailed approach is unnecessary and could inadvertently serve to delay attainment of the pro-competitive goals established as national policy by the 1996 Act. Congress has specified, and the industry needs, FCC guidelines or restrictions where the Act provides for them.[9] The Commission should, however, be guided by the clear Congressional intent that increased local competition be driven by voluntary actions of the private sector as motivated by specific incentives that were carefully built into the

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[7] 47 U.S.C. Section 251(d)(3); NPRM, para. 77.

[8] NPRM, para. 3.

[9] See Section III.A.1, infra.

legislation, not by regulatory mandate. Detailed federal regulations would hamstring the voluntary negotiation process Congress intended because parties would be encouraged simply to make demands based upon their own interpretations of FCC rulings rather than to negotiate in good faith.[10]

II. THE APPROACH OF THE NPRM IS GENERALLY INCONSISTENT WITH THE INTENT OF CONGRESS.

The Commission historically has carried out its responsibilities via the traditional, comprehensive regulatory approach. This approach is, however, not consistent with the Congressional intent in this instance. Congress has laid out a clear, comprehensive program for exactly how it wants to see the telecommunications industry evolve. The Commission should play its part by adopting only those regulations necessary to facilitate that program.

A. Congress Wants Local Competition To Develop Via The Process Of Private Industry Negotiation. (NPRM - II.B.1.)

Section 251 of the 1996 Act imposes specific obligations upon telecommunications carriers generally, and upon local exchange carriers (LECs) and ILECs in particular.[11]

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[10] SBC endorses the comments to be filed by the United States Telephone Association (USTA) in this proceeding and strongly urges the Commission to place great weight upon the positions taken therein.

[11] The 1996 Act generally imposes the following obligations: resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, duty to negotiate, interconnection, unbundled access, notice of network changes and collocation. See generally 47 U.S.C. Section 251.

However, Congress correctly determined that the fastest way to ensure those obligations are met is by providing strong incentives for carriers to freely negotiate with one another the terms and conditions of interconnection. The heart of the Act is the negotiation process set out in Section 252. It is especially important to note that, although all such negotiated interconnection agreements ultimately must be submitted to a state commission for review,[12] the Act emphasizes that all carriers are free to negotiate and enter into binding agreements "without regard" to the specific obligations set forth within Section 251.[13]

Thus, the NPRM's references to the potential need for numerous "national standards" or a "national policy" are largely misplaced. Congress has already established the national policy for these matters and it can be summed up in one word: negotiation. Congress recognized that different companies will have different business plans. To account for such differences, Congress made requirements for LECs flexible. Although there are limited exceptions (as noted later), for the most part "national standards" are contrary to the intent of the Act due to their inherent inflexibility which will hinder, if not prevent, carrier negotiations.

Where the NPRM discusses the potential need for various forms of fences around what some parties claim to be disproportionate ILEC market power, particularly in the

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[12] 47 U.S.C. Section 252(e).

[13] 47 U.S.C. Section 252(a) (emphasis added).

context of negotiations,[14] it should, instead, speak in terms of "guidelines" and "safe harbors." The Conference Report provides, in part, that the Act is intended "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[15] Congress was not unaware of the composition of the local exchange market and the degree of competition present. The terms of the Act were intended to reflect a balancing of the policy issues implicit within the regulatory reform of telecommunications markets. Congress has decided where and how to "limit the effect of the incumbent's bargaining position on the outcome of negotiations"[16] where such limits were deemed appropriate.

Furthermore, were the Commission to assign parameters for various elements of negotiated interconnection agreements as discussed at paragraph 31 of the NPRM, that would reduce carriers' flexibilities even more, and would be even more inconsistent with Congressional intent. Reducing options for negotiating parties was not a role Congress contemplated for the FCC.

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[14] NPRM, paras. 8, 20, 50, 175, 184 and 197.

[15] Conference Report at 113.

[16] NPRM, para. 31.

1. In Both The Short And Long Term, Congress Expects Reduced Regulation As Competition Develops. (NPRM - II.A.)

The legislative history makes it apparent that Congress wants less and less regulation as the expanded competition it seeks to foster takes root. As stated in the Findings of S.652, "[t]ransition rules must be truly transitional, not protectionism for certain industry segments or artificial impediments to increased competition in all markets. . . . Regulatory safeguards should be adopted only where competitive conditions would not prevent anticompetitive behavior."[17] To abide by this clear Congressional intent, the Commission must take care to adopt regulations only where it is proven that market forces would not accomplish the goals of the Act. SWBT submits, and demonstrates throughout the remainder of these Comments, that few regulations are necessary.

Other evidence that Congress expects reduced regulation is plentiful within the Act. Section 401 mandates that the Commission "shall forbear from applying any regulation" where unnecessary to ensure just and reasonable carrier charges and practices.[18] Section 402 requires a biennial FCC review to identify and repeal any regulation no longer necessary "as the result of meaningful economic competition."[19] Indeed, upon enactment Congress mandated that Section 214 filings be eliminated for the extension of any line

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[17] S.652 at Section 5(4) (emphasis added).

[18] 47 U.S.C. Section 160 (emphasis added).

[19] 47 U.S.C. Sections 161 (a) and (b).

and for video services, that cost allocation manuals and ARMIS reports be filed annually rather than quarterly, and that depreciation rate setting be optional, not mandatory.[20]

The Congressional message is unambiguous: we are to start reducing regulation in this industry, and we are to start now. It is equally clear that in the longer term Congress desires deregulation of the telecommunications industry. As stated in S.652, "[c]ompetition, not regulation, is the best way to spur innovation and the development of new services. A competitive marketplace is the most efficient way to lower prices and increase value for consumers."[21]

B. Congress Seeks A Rapid Increase In Competition From Carriers' Voluntary Actions Motivated By Specific Market Incentives, Not "Managed Competition." (NPRM - II.A.)

If Congress had intended to utilize the traditional regulatory means for augmenting the overall competitiveness of the communications industry, the FCC would have been directed to promulgate specific, detailed rules to force that result. Congress instead chose a system of marketplace incentives designed to motivate carriers to act voluntarily in the desired fashion, namely entering into negotiated interconnection agreements to facilitate the growth of local service competition. Congress understood that the way to ensure the quickest action is to give proper business incentives and then to let market forces take over.

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[20] 1996 Act, Sections 402(b)(2)(A) and (B).

[21] S.652 at Section 5(1) (emphasis added).

1. Congress's Use Of Specific, Compact Time Frames Reflects Its Desire To Prompt A More Competitive Industry More Quickly Than The Historic Pace Of The Regulatory Process. (NPRM - II.A.)

Another indication that Congress desires to avoid the traditional regulatory approach is its use of detailed, compact time lines for negotiation dispute resolution spelled out within Section 252 of the Act. Carriers negotiating interconnection agreements must opt to seek state arbitration no earlier than 135 days nor later than 160 days after negotiations begin.[22] State commissions have nine months from the date of a negotiation request to rule in arbitration cases.[23] If the parties submit a negotiated agreement to a state commission for approval, the commission has 90 days in which to rule (and 30 days to rule on an arbitrated agreement).[24] In the absence of state commission action in either case, an agreement is deemed approved.[25]

These provisions show that Congress expects this process to move along in an accelerated fashion compared to the traditional regulatory process. Further, the legislative history plainly establishes that, rather than asking the FCC to do so, Congress itself has chosen to establish the guidelines, standards and time lines for effecting the desired new levels of competition:

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[22] 47 U.S.C. Section 252(b)(1).

[23] 47 U.S.C. Section 252(b)(4)(C).

[24] 47 U.S.C. Section 252(e)(4).

[25] Id.

> Congress should establish clear statutory guidelines, standards, and time frames to facilitate more effective communications competition and, by so doing, will reduce business and customer uncertainty, lessen regulatory processes, court appeals, and litigation and thus encourage the business community to focus more on competing in the domestic and international communications marketplace.[26]

2. Incentives Created By The Act Are Sufficient To Motivate Incumbents To Work With New Entrants To Open Local Markets. (NPRM - II.B.1.)

BOCs are still prohibited by the Act from entering either the in-region interLATA business or the manufacturing business until they have complied with the sections of the Act designed to promote local service competition.[27] This serves as a powerful incentive. As noted above, SWBT announced, on May 9, 1996 -- just three months after the Act was signed into law -- that it had entered into an interconnection agreement with American Telco, Inc. that will cover large areas of Texas, the first such agreement to be fully negotiated under the terms of the 1996 Act. Other BOCs have announced the signing of interconnection agreements negotiated prior to passage of the Act but which are largely consistent with and which anticipated its provisions, and several others are reportedly close to making similar announcements. The incentives created by the Act are already working.[28]

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[26] S.652 at Section 5(6) (emphasis added).

[27] See generally, 47 U.S.C. Sections 271, 273, 251 and 252.

[28] The Commission's concern over LECs insisting on non-disclosure agreements being signed prior to the start of negotiations (NPRM, para. 47) is unwarranted. A requirement

(continued...)

The interexchange market in the United States is now a $70 billion industry, and even AT&T concedes that BOC competition alone could capture more than $10 billion of that market in just a few years.[29] Competition this important should be encouraged. Moreover, virtually every carrier has stated that it must offer one-stop access to various services which must, at a minimum, include wired, wireless and long distance. The BOCs must obtain entry into the long distance market if they are to compete. Congress recognized the tremendous incentive of BOC in-region interLATA entry that is conditioned upon BOC interconnection agreements necessary to create more open local service competition.

3. Differing Outcomes Must Be Expected Due To Different Conditions Affecting The Negotiating Parties. (NPRM - II.B.1.)

The Commission should be careful to avoid adopting regulations which seek to effect national uniformity with regard to any aspect of interconnection negotiations. Because of substantial variation in network technologies, markets, and carriers' business plans, force-fitted "national uniformity' would serve only to frustrate the negotiations and hamstring the process. Among the factors that can fluctuate dramatically from area to area are: the

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[28](...continued)
to sign a non-disclosure agreement in the course of negotiating in good faith is reasonable, consistent with sound business practice, and will not impede the development of local competition. Such agreements are common in vendor-client negotiations and are mutually beneficial by facilitating the open exchange of information.

[29] Wall Street Journal, February 22, 1996, p. 1.

business plans and capabilities of new entrants, state commission policies, local regulations and taxes, demographics, technological level of the LECs' embedded networks, historic pricing of key telecommunications services (including, most importantly, intrastate access rate levels), degree of parity between intra- and interstate access rates, consumers' needs and desires regarding alternative suppliers, and degree of existing market penetration for certain services, to name just a few.[30]

Of special importance in this regard is the fact that there are substantial technical differences among the LECs' networks. It is not justifiable to conclude that because equipment vendors sell to a "nationwide market" without substantial state-to-state variation in equipment design, there is homogeneity among LEC networks.[31] To the contrary, LECs typically buy their network equipment from several different nationwide vendors, and there are significant technical differences from vendor to vendor, even between similar pieces of equipment. Within a given vendor's line of network equipment there are various levels of software upgrades available to the LEC. Software upgrades in switches are by no means uniform even within a specific LEC's territory, much less among all LECs.

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[30] It is not likely that such variations among the states will stifle competitive progress. All state regulators now know that increased competition is the national policy goal established by Congress, and all such regulators are capable of obtaining that goal despite state specific conditions that vary from state to state.

[31] NPRM, para. 79.

Moreover, the Commission should be aware that, merely because on the surface there appear to be similarities among different regions, that does not necessarily mean the same set of assumptions can be made about them. If one were to look at the four "corners" of the country as a "diamond study" (Illinois, Virginia, Texas and California), one could note that the "average revenue per line" in each of these states is quite comparable ($33.24, $34.41, $33.85 and $30.32, respectively).[32] However, it would be a mistake to conclude that similar assumptions can be made about the manner in which interconnection or resale agreements would likely (or should likely) be negotiated in these four states.

In Texas, access lines are flat rate and calling scopes are quite large because that is the structure that the Texas Commission favors. On average, for less than $10 per month, a residential customer can obtain flat rate local service. A flat rate business line is also available for less than $25 per month. In marked contrast, in California all local business calling and all residential calls in excess of 12 miles are measured. Both time and distance are measured in that state. In Illinois, all calls outside of a residence local untimed calling area (generally 0-8 miles from the serving wire center) are measured for

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[32] The relatively minor difference between California and the other three states can be explained to a large degree by the fact that California has yet to introduce Caller ID on a broad scale. This revenue data was obtained from FCC Report 43-02, Table I-1 for California, Illinois and Virginia and from SWBT's General Ledger for Texas. All numbers were taken from 1995 ARMIS Reports and exclude Cellular Mobile Service revenues. Access line data was obtained from various public company reports.

both time and distance. Unlike any of the first three states, in Virginia, residential usage is measured only on a per-call basis ($0.096 per call), but local business is fully measured for both distance and duration (on a per-minute basis).

These are but a few examples of the fundamental differences in state regulatory approaches across the country, which demonstrate that the nature and scope of interconnection negotiations under the Act should be left entirely up to the market participants, not hemmed in by pre-imposed, rigid "national standards." This is the only way that all the variations in local conditions can be accounted for appropriately, and the only way for the Commission's approach to be fully consistent with Congress's clear intent.

4. The States Will Meet Their Responsibilities Under The Act. (NPRM - II.A.)

There is every reason to believe that state commissions will fulfill their responsibilities as arbitrators under the Act wherever negotiations fail to produce complete interconnection agreements under Section 251. Indeed, the NPRM notes literally dozens of instances in which states have already been leading the way toward the new, more competitive era in telecommunications in this country by conducting their own proceedings along many of the same lines as contemplated by the Act.[33]

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[33] See, e.g., NPRM, paras. 59, 62, 63 and 65.

Yet, the Commission seems uncertain that the states can or will fulfill their roles under the Act. The NPRM seeks comment on whether it should adopt rules in many areas that legally fall within the states' jurisdiction.[34] The Commission instead should acknowledge that the Communications Act continues to provide for a dual jurisdictional scheme,[35] and that the states can and will meet their assigned responsibilities under the 1996 Act.

There is no need for the FCC to attempt to regulate either the Act's mandated negotiation process or any other process that Congress has left to the state commissions.

C. Congress Intends That Markets Be Opened Simultaneously. (NPRM - II.C.3.)

Most states today do not require "1+" toll dialing parity for intraLATA competition. Instead, these states chose to allow ILECs to be the default providers in that market segment, to ensure a substantial source of subsidy to help keep local exchange service rates low. While Congress wanted to see greater competition in that market segment as well as in all others, it recognized the artificial and inequitable nature of any plan that would mandate that result prior to many of the largest ILECs (the BOCs) also being allowed into the in-region interLATA market of the IXCs.

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[34] See, e.g., NPRM, paras. 37-39.

[35] 47 U.S.C. Sections 152(a) and (b).

The Act specifies, therefore, that (except for certain grandfathered situations) intraLATA toll dialing parity (1+ dialing for intraLATA toll) cannot be required by any state until the BOC has received interLATA authority in that state (or three years after enactment).[36] The Act also prohibits all telecommunications carriers that serve greater than 5 percent of the nation's presubscribed access lines from bundling a BOC's services required to be resold by Section 251 in combination with their interLATA services until that BOC has received interLATA relief (or three years after enactment).[37]

III. CONGRESS INTENDS DISTINCT ROLES FOR FEDERAL AND STATE REGULATORS, WITH STATES PLAYING A MAJOR ROLE.

Congress fully debated the proper roles of local governments and state and federal regulators, and these roles are spelled out clearly in the Act. State and federal regulators are to have distinctly different roles, with state regulators bearing most of the responsibility for actual implementation.

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[36] 47 U.S.C. Section 271(e)(2)(B).

[37] 47 U.S.C. Section 271(e)(1). Congress recognized the need to maintain some semblance of competitive balance through this "simultaneity." The Commission should exercise caution not to upset that intended balance.